

Appl. No. 09/800,645  
Amdt. dated October 24, 2003  
Reply to Office Action of July 24, 2003

### **REMARKS/ARGUMENTS**

Claims 1 - 6, 8 - 19, and 22 - 33 are pending in this application. Reconsideration of the present application in view of the foregoing amendments and the following remarks is respectfully requested.

#### **A. Rejection Of Claims 4 and 5 Under 35 U.S.C. § 112**

Claims 4 and 5 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicants regard as the invention. The Examiner states that Claims 4 and 5 recited the limitation "said dewatered fibrous web" in line 1 for which there is insufficient antecedent basis for this limitation in the claims. Claims 4 and 5 have been amended to recited "a dewatered fibrous web". Accordingly, Applicants believe the rejection should be withdrawn. Applicants submit that the amendment does not narrow the scope of these claims.

#### **B. Double Patenting Rejection**

Claims 1 and 22 have been rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,582,560.

Applicants submit herewith a provisional terminal disclaimer in compliance with 37 C.F.R. § 1.321(b) for the present application in the event the present application issues and the rejections herein are maintained.

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**C. Rejection Of Claims 1 - 6, 8 - 19, and 22 - 33 Under 35 U.S.C. § 103(a)**

Claims 1 - 6, 8 - 19, and 22 - 33 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,379,498 issued on April 30, 2002 to Burns et al. (hereinafter referred to as the "Burns et al. reference") in view of U.S. Patent No. 4,853,086 issued on August 1, 1989 to Graef (hereinafter referred to as the "Graef reference"). Applicants respectfully traverse the rejection as it may apply to the present claims.

The Examiner stated that the Burns et al. reference discloses a process for chemical treatment of pulp fiber which includes the steps of creating a slurry 10 of pulp fiber and water, transporting said slurry to headbox 28 from where the fiber slurry is deposited into a fourdrinier section 30 forming a wet fibrous web 32. The Examiner further stated that the Burns et al. reference disclosed removal of water by mechanical pressure and other means, and then the formed web is dried in a dryer section 34. The dried fibrous web in the Burns et al reference according to the Examiner has retention of between 10 and 100 percent of the chemical additives upon dewatering. The Examiner also stated that the Burns et al. reference discloses that chemicals are added in the process creating a fibrous web containing chemically treated pulp fibers. The Examiner pointed out that the Burns et al. reference failed to disclose that the chemicals are added after the web has been dried. The Examiner stated that the Graef reference disclosed a method of making a fibrous product, in which a partially dried web is treated with chemical additives. The Examiner stated that it would be obvious to one skilled in art, at the time the invention was made, to combine the teachings of the Burns et al. and Graef references because such a combination would improve the absorbency of the product of the Burns et al. reference as disclosed by the Graef reference.

Applicants submit that the Burns et al. reference teaches high levels of add on of the chemical additive on the pulp fiber with no or low levels of unretained chemical additive available to contaminate the process water on a tissue machine. The Graef reference does not disclose reslurrying his treated pulp fiber in water. The Graef reference teaches addition of chemistries to modify cellulose stiffness for dry formed products. See Column 1, line 8 to line 12: "The method is especially directed to the formation of a sheeted pulp product that can be mechanically formed into a fibrous fluff having increased water absorption and water holding capability."; See Column 4, line 25 to 28: "It is an object of the present invention to provide a method of making a resilient hydrophilic cellulose pulp which can be mechanically formed into a fibrous fluff having an increased water absorption rate."; See also Column 4, line 65 to 68: "The fluff is made by milling the sheets

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in the converter's plant at the point of manufacture of the ultimate absorbent product." ) As such, the Graef reference does not disclose subsequent retention of the treatment chemistry if the fibers were reslurried as such a step was not disclosed. The Burns et al. reference in view of the Graef reference does not establish a prima facie case of obviousness. The Graef reference does not disclose chemical additive treatment of pulp fiber that is reslurried during manufacture of products, such as tissue products. The Burns et al. reference teaches chemically treating a pulp slurry. The Burns et al. and Graef references do not suggest the present invention. For the reasons stated above, Applicants submit that neither the Burns et al. reference nor the Graef reference would work as described or obtain the recited benefits if so modified. Accordingly, Claims 1 - 6, 8 - 19, and 22 - 33 are believed to be novel and nonobvious over the cited references.

Ecolchem Inc. v. Southern California Edison Co., 56 U.S.P.Q.2d 1065 (Fed. Cir. 2000):

We have previously held that "[t]he suggestion to combine may be found in explicit or implicit teachings within the references themselves, from the ordinary knowledge of those skilled in the art, or from the nature of the problem to be solved." *WMS Gaming, Inc. v. International Game Tech.*, 184 F.3d 1339, 1355, 51 USPQ2d 1385, 1397 (Fed. Cir. 1999). However, there still must be evidence that "a skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination in the manner claimed." *In re Rouffet*, 149 F.3d at 1357, 47 USPQ2d at 1456; see also *In re Werner Kotzab*, 217 F.3d 1365, 1371, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000) ("[A] rejection cannot be predicated on the mere identification...of individual components of claimed limitations. Rather, particular findings must be made as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed.").

There must be some logical suggestion or motivation to justify a combination or modification of the cited art references. The Burns et al. reference cited by the Examiner provides no impetus to arrive at Applicants' claimed invention, especially in view of the remarks made above regarding the Burns et al. reference. The Graef reference cited by the Examiner provides no impetus to arrive at Applicants' claimed invention. In addition, one skilled in the art would not logically look to or be motivated to a reference disclosing a method of forming block material into propellers for suggestions to modify a tissue making process. Therefore, one skilled in the art, aware of the Burns et al. reference and the Graef reference would not have arrived at the claimed invention. Consequently, based on the foregoing remarks, the Section 103(a) rejection of Claims 1 - 6, 8 - 19, and 22 - 33 should be withdrawn.

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#### D. Conclusion

The application now contains Claims 1 - 6, 8 - 19, and 22 - 33 which are believed to be in condition for allowance. Applicants would like to thank the Examiner for the careful attention paid to the present application. Early allowance of the claims in view of the above amendments and remarks is earnestly requested.

Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875.

The undersigned may be reached at: (920) 721-7671.

Respectfully submitted,

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#### CERTIFICATE OF FACSIMILE TRANSMITTAL

I, Judy Garot, hereby certify that on October 24, 2003 this document is being transmitted via facsimile to the United States Patent and Trademark Office, Alexandria, VA to facsimile no. (703) 872-9310.

By: 

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